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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,726	02/09/2004	Bartholomaeus Kellerer	P2001,0567	9207
24131 7590 07/08/2008 LERNER GREENBERG STEMER LLP P O BOX 2480 HOLLYWOOD, FL 33022-2480				
EXAMINER				
KEEFE, MICHAEL E				
ART UNIT		PAPER NUMBER		
2154				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/774,726

Applicant(s)

KELLERER ET AL.

Examiner

MICHAEL E. KEEFER

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is responsive to the Amendment filed 3/10/2008.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 10 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 10 and 22, it is unclear how the means for terminating functions for increasing availability can be accomplished by coupling with a device that cannot be addressed, furthermore, if the device cannot be addressed it is unclear how it could be coupled with in the first place. The Examiner is interpreting these claims to be indicating that the coupling is terminating when the monitoring indicates that the second device is not working (i.e. addressable).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 5.
- 6.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claims 1-3, 9-11, 12-15, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modiri et al. (US 6192401) in view of Davis et al. (US 6282712), hereafter Davis.

Regarding **claims 1 and 12-13**, Modiri discloses:

Coupling means for increasing availability between nodes on an IP network (i.e. nodes that are not identified in the network). (Abstract teaches cluster management software running on a plurality of computers which performs various duties that increase the availability of services on the network by controlling the clustering of the computers. Modiri clearly implies that the computers can be on an IP network in Col. 5 lines 21-32 by listing internet services as services that can be provided, which use the IP.)

Modiri discloses all the limitations of claims 1 and 11-13 and 23 except for automatically installing software over the network remotely.

The general concept of installing software to a node over the network is well known in the art as taught by Davis. (Col 11 line 56 - Col. 12 line 8 teach the installation of software on a server via the network automatically.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Modiri with the general concept of installing software to a node

over the network as taught by Davis in order to provide management updates to nodes in the network.

Regarding **claims 2 and 14**, Modiri discloses:

The means for increasing availability are provided automatically. (Col. 4 lines 50-66 disclose that the monitoring of a keep alive signal is done automatically.)

Regarding **claims 3 and 15**, Modiri discloses:

The means being set up such that functions for increasing availability can be administered from another node. (Col. 5 lines 34-50 discloses a remote cluster management system.)

Regarding **claims 9 and 21**, Modiri discloses:

Monitoring addressability of at least one of the other nodes. (Col. 4 lines 50-66 discloses the monitoring of communications integrity.)

Regarding **claims 10 and 22**, Modiri discloses:

Terminating functions for increasing availability when a node becomes unavailable. (Col. 4 lines 50-67 disclose stopping communications to a failed node and making a new connection to another node (i.e. failover).)

9. Claims 4 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modiri and Davis as applied to claims 1 and 13 above, and further in view of Chung et al. (US 6195760), hereafter Chung.

Modiri and Davis teach all the limitations of claims 4 and 16 except for replicating memory.

The general concept of replicating memory is well known in the art as taught by Chung. (Abstract, and Fig. 2 show the storage of the same files in multiple memories.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Modiri and Davis with the general concept of replicating memory as taught by Chung in order to make backup copies of essential files.

10. Claims 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modiri and Davis as applied to claims 1 and 13 above, and further in view of White et al. (US 2003/0023740), hereafter White.

Modiri and Davis teach all the limitations of claims 5 and 17 except for parallel processing.

The general concept of running the same task on parallel nodes and checking the results is well known in the art as taught by White. ([0011] teaches running the same calculations on coupled identical devices and checking the results against each other.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Modiri and Davis with the general concept of running the same task on parallel nodes and checking the results as taught by White in order to ensure that hardware and software is still properly functioning on all nodes.

11. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modiri and Davis as applied to claims 1 and 13 above, and further in view of Funaya (US 5778186).

Modiri and Davis teach all the limitations of claims 6 and 18 except for translating between physical and logical addresses.

The general concept of translating between physical and logical addresses is well known in the art as taught by Funaya. (Fig. 43, S8 teaches translating between physical and logical addresses.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Modiri and Davis with the general concept of translating between physical and logical addresses as taught by Funaya in order to make the system more flexible.

12. Claims 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modiri and Davis as applied to claims 1 and 13 above, and further in view of Lean et al. (US 2003/0105850), hereafter Lean.

Modiri and Davis teach all the limitations of claims 7 and 19 except for alarm and event messages being routed to a central place to facilitate countermeasures.

The general concept of providing an alarm or event aggregation server for a cluster is well known in the art as taught by Lean. ([0147] discloses that all alarm messages in the cluster go to alarm server 118)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Modiri and Davis with the general concept of providing an alarm or event aggregation server for a cluster as taught by Lean in order to allow the administrator visibility into errors occurring within the cluster.

13. Claims 8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modiri and Davis as applied to claims 1 and 13 above, and further in view of Lee et al. (US 5774479), hereafter Lee.

Modiri and Davis teach all the limitations of claims 8 and 20 except for timers being provided regarding the second node.

The general concept of providing timers in a network system is well known in the art as taught by Lee. (Col. 8 lines 4-10 teach the use of multiple timers to time-out communications failures.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Modiri and Davis with the general concept of providing timers in a network system as taught by Lee in order to provide a more versatile method of determining connectivity failures.

Response to Arguments

14. Applicant's arguments filed 3/10/2008 have been fully considered but they are not persuasive.

The rejection of claims 8 and 20 under 35 U.S.C. 112 2nd paragraph has been withdrawn specifically due to Applicant's admission on page 16 in the remarks that providing timer objects in redundant form is well known to one of ordinary skill the art.

The Examiner does not see how the amendments to the independent claims have clarified the meaning of claims 10 and 22, and is thus maintaining the rejection of these claims under 35 U.S.C. 112 2nd paragraph.

Applicant argues that Modiri is restricted to computers from a predetermined set of computers, and thus cannot be combined with the teachings of Davis. The Examiner disagrees with this argument, because in at least col. 2 lines 31-33

Modiri discusses nodes leaving or joining the cluster, thus, the set of computers is not 'predetermined' as Applicant insists. However, even -if- Modiri did specifically only support a predetermined number of computers, it would not teach away from the desirability of being able to add more computers to an existing cluster.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL E. KEEFER whose telephone number is (571)270-1591. The examiner can normally be reached on Monday through Friday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MEK 7/3/2008

/Joseph E. Avellino/

Primary Examiner, Art Unit 2146